**IN THE HIGH COURT OF DELHI**

**FAO No.3/05**

# Smt. Deepa Arora ..... Appellant
through: Mr.V.K. Singh, Advocate

VERSUS

$ Mr. Saurabh Arora & Anr. ..... Respondents
through: Mr.Dushyant Swaroop, Advocate for R-1

RESERVED ON: 03.12.2007

% DATE OF DECISION: 10.12.2007

**CORAM:**

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. This appeal is directed against the order dated 06.09.04 passed by the learned Additional District Judge, Delhi whereby letters of administration were granted in favour of the respondent no.1 in respect of the Will dated 15.5.91 executed by Late Sh. Praveen Kumar Arora.

2. Late Sh. Praveen Kumar Arora (hereinafter referred to as the deceased) who died on 7.10.92 was survived by his wife Smt. Deepa Arora, a minor son Saurabh Arora and mother Smt. Kamla Arora.

3. The relationship between the deceased and his wife were strained and they were living separately from each other from 3 years prior to the death of the deceased. The son Saurabh was living under the care and guidance of the deceased. Deceased had filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty. At the time of the death of the deceased said petition was pending trial in a matrimonial court.

4. On death of the deceased a petition under Section 372 of the Indian Succession Act, 1925 seeking succession certificate in respect of the estate of the deceased was filed by the son of the deceased through his late father's sister Smt. Preeti Sarin. On respondent no.1 attaining majority during the pendency of the petition, vide order dated 03.06.2000, learned Trial Court granted permission to the respondent no.1 to sue on his own.

5. Succession Certificate was sought on the basis of a Will purported to have been executed by the deceased on 15th May, 1991. As per the Will, the deceased had bequeathed his entire estate in favour of respondent no.1 to the exclusion of all including his wife Smt. Deepa Arora and mother Smt. Kamla Arora.

6. Wife of the deceased opposed the petition while mother of the deceased had supported the Will dated 15.5.1991 purported to have been executed by the deceased.

7. The Will in question, Ex.PW1/1, is a computer typed document and consists of 2 sheets. It has been typed in English language. It bears the signatures of the deceased on each page. The signatures have been appended in English. The Will in question is an unregistered document.

8. The Will in question has been witnessed by one Mr.Rajinder Pal and Mr.Akash Chanana.

9. Rajinder Pal has been examined by the respondent no.1 as PW-1 to prove the Will. In his examination-in-chief he deposed that father of the deceased was son of his maternal uncle. That he knew the deceased since the birth of the deceased and that he and the other attesting witness had attested the execution of the Will by the deceased. That on 15.5.91 deceased told him to come to the office of Mr. Akash Channa. That when he reached the office of Mr.Akash Channa at about 7 P.M. deceased and Akash Channa were already present. That the deceased expressed his desire to execute a Will and requested him to become an attesting witness. That he agreed to the said request. That the Will Ex.PW1/1 was already got typed by the deceased. That deceased and other attesting witness i.e. Mr.Akash Channa appended their signatures on the Will in his presence. That he also signed the Will in the presence of the deceased and Mr.Akash Channa. That since the deceased was only 38 years of age he had questioned the deceased as to why he is

making a Will at such a young age, to which he replied that life is uncertain and age is no consideration for making a Will.

10. Respondent no.1 also stepped into the witness-box as PW-2. He deposed that the deceased had told him that he had executed a Will in his favour. That relations between his parents were strained and that they were living separately. That he was residing with the deceased during the lifetime of the deceased.

11. On the other hand, objector/appellant i.e. Smt. Deepa Arora examined his father as RW-1. He deposed that the Will Ex.PW1/1 is a forged and fabricated document. That his daughter had instituted various litigations against the deceased and his family. That in order to defeat the claim of the appellant family of the deceased has created a false Will Ex.PW1/1.

12. To prove that the Will Ex.PW1/1 is a fabricated document, one Mr.R.P.Singh, Handwriting Expert was examined as RY. His report was marked as Ex.RY/1. He deposed that he had made a comparative analysis of disputed signatures on the Will with the admitted signatures of the deceased and came to the conclusion that disputed signatures differ from the admitted signatures and are not written in the hand of same person.

13. Considering the evidence led by both the parties, vide order dated 06.09.04, the learned Trial Court has held that the Will dated 15.05.91 was the last legal and valid testament of the

deceased and thus granted letters of administration in favour of the respondent no.1 Saurabh Arora. Learned Trial Court has further held that the respondent no.1 is not entitled to be granted succession certificate in view of provisions of Section 370 of the Indian Succession Act, 1925.

14. Aggrieved by the impugned order dated 06.09.04, objector to the petition under Section 372 of the Indian Succession Act, 1925 filed by the respondent no.1 has filed the present appeal.

15. In support of their objections, following grounds were urged by the objector:- (Same grounds have also been urged in the present appeal)

A That the testator was a young man of 38 years of age and suffering from no disease so the execution of Will at this young age is by itself a suspicious circumstance.

B Professionalism of the recital of the Will is a circumstance casting heavy suspicion on the genuineness of the Will.

C Since the alleged attesting witness Mr.Rajinder Pal is a relative of the family of the deceased, not much importance/weightage can be attached to his testimony.

D Opinion of the handwriting expert Mr. R.P. Singh conclusively established that the Will dated 15.05.91 Ex.PW1/1 does not contain the signatures of the deceased and is thus a forged and

fabricated document.

16. Section 2(h) of the Indian Succession Act, 1925 defines a Will to mean the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

17. In the decision reported as *Smt Jaswant Kaur v Smt Amrit Kaur* AIR 1977 SC 74 the Supreme Court has described the nature and standard of evidence required to prove a Will. In para 10 of the decision, the Supreme Court has observed as under:-

> "10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in R. Venkatachala Iyengar v. B.N. Thimmajamma and Ors. [1959] Supp. 1 S.C.R. 426. The Court, speaking through Gajendragadkar J., laid down in that case the following propositions:-
>
> > 1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.
> >
> > 2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the pro-pounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the pro-pounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of

> the judicial conscience has been evolved. That test emphasies that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.
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> 6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

18. In the decision reported as *Smt. Indu Bala Bose v Manindra Chandra Bose* AIR 1982 SC 133 the Supreme Court defined a "suspicious circumstance" as:-

> "Needless to say that any and every circumstance is not a `suspicious' circumstance. A circumstance would be `suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

19. Further, in *Indu Bala*'s case (supra) the Supreme Court has laid down following rule relating to "suspicious circumstances".

> "We do not find any suspicious circumstance surrounding the execution of the will. The circumstances pointed out by learned Counsel are not only not suspicious but normal as pointed out above. The rule, as observed by the Privy Council, is that "where a will is charged with suspicion, the rules enjoin a reasonable septicism, not as obdurate persistence in disbelief. They do not demand from the judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth." (See 500 C.W.N. 895)"

20. A Division Bench of the Madras High Court in the decision reported as *Corra Vedachalam Chetty & Anr v G. Janakiraman* 2001 (3) CRC 283 had an occasion to consider the duty of a probate court. In the decision, it was observed as under:-

> "The testamentary Court is a Court of conscience. It is not a Court of suspicion. It is not the law that, whenever a Will is sought to be proved in the Court, the Court should start with the presumption that the Will is not genuine, that it is fraudulent and that the person who chooses to probate the Will must remove all such suspicions even they are not unreal. The object of the probate proceedings is not to render the testamentary document ineffective but to make it effective and render the terms of that Will operative. In doing so, the Court has to take note of the fact that the testator is not available to the Court to state as to whether the document in fact was his or her last Will or as to whether he or she had signed the same and whether the attestors had signed receiving an acknowledgment from him about the execution of the Will. It is for that reason that the Courts should be cautious while dealing with the evidence placed before them in relation to the executions and attestation, of the Will as also the disposing state of mind of the testator.
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> This need for caution, cannot be exploited by unscrupulous caveators who choose to cull out imaginary suspisions with a view to prevent the legatees under the Will from claiming the benefit thereunder and to render the last Will of the deceased wholly ineffective. In this context, the conduct of the persons who raise the alleged ground for suspision is also to be looked at, to know as to how credible are the grounds for suspisions sought to be raised by such persons. In this case, the suspicion is sought to be raised by a person who is keenly interested in making the Will ineffective and whose conduct is far from one which would inspire confidence in truthfulness of his statements."

21. From the afore-noted judicial decisions, following legal

principles can be culled out:-

I. For proof of a Will, one need not insist on proof with mathematical certainty and evidence of one attesting witness is sufficient if credible.

II. The legal burden to prove due execution always lies upon the person propounding a Will.

III. The onus which rests on the propounder of the Will is treated as discharged when essential facts which go into the making of the Will are proved.

IV. Where suspicious circumstances exist, the onus to dispel the said suspicion is very heavy on the propounder. In such a case, the test which is evolved is the satisfaction of judicial conscience.

V. Circumstances can only raise a suspicion if they are circumstance attending, or at least relevant to the preparation and execution of the Will itself.

VI. Examples of suspicious circumstances are shaky signatures, feeble mind of the testator, propounder himself playing an active part in the execution of the Will etc.

VII. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence.

VIII. Well founded suspicion may be a ground for close scrutiny of evidence but suspicion alone cannot form the foundation

of a judicial verdict-positive or negative.

IX. Where fraud, undue influence, coercion etc is alleged by the person challenging the Will such plea has to be proved by that person. In the absence of such a plea, if the circumstances surrounding execution raise a doubt, it is for the propounder to remove all the doubts.

22. Keeping in mind the afore-noted judicial parameters I will now consider the objections raised by the appellant to the Will and evidence on record.

23. As regards ground 'A' i.e. execution of Will by the deceased at a young age and at the time when he was enjoying good health is a suspicious circumstance, it is relevant to note that the relations between the deceased and the objector were very strained. Multifarious litigation was pending between them. It is an admitted fact that the deceased and objector were living separately from each other since 3 years prior to the death of the deceased. From the afore-noted facts it could reasonably be inferred that the deceased was disillusioned with his wife and executed the Will. That the deceased executed a Will at a young age cannot be a suspicious circumstance considering the circumstances of this case.

24. It is further relevant to note that minor son of the deceased and objector i.e. respondent no.1 was staying with the deceased. The father of the objector in his testimony as RW-1

admitted that the objector made no attempt during the lifetime of the deceased to obtain the custody of respondent no.1. The deceased might have been feeling that the objector had abandoned respondent no.1. It is reasonable to assume that to make up for the void created in the life of the respondent no.1 due to absence of his mother deceased was extra-affectionate and careful towards the well-being of the respondent no.1. It is quite possible that this love and worry for the future of respondent no.1 prompted the deceased to execute the Will in favour of respondent no.1.

25. In the decision reported as *Smt. Rajeshwari Rani Pathak v Smt. Nirja Guleri* AIR 1977 P&H 123 testator executed a Will bequeathing his entire property in favour of his mother's sister Smt. Rajeshwari Rani Pathak. As per the Will, she had brought up the testator since the age of five years. The wife of the testator Nirja Guleri was disinherited and the averment in this regard was to the following effect:-

> "As regards Smt. Nirja, though she was married to me, but has deserted me and I do not give her anything out of my property as she is already given all the ornaments, jewellery and household goods with Rs. 50,000/- cash and has, therefore, given up her claims, if any, over my property."

26. The wife Nirja Guleri raised an objection to the genuineness of the Will. One of the contentions advanced by her was that the testator was only 34-36 years of age at the time of the execution of the alleged Will and was not in anticipation of death,

thus there was no reason or any occasion for him to execute any Will. Noting the series of correspondence between the testator and objector-wife which established that the relations between them were far from cordial, the Punjab and Haryana High Court observed as under:-

> "39. .....That the will was made when the testator was quite young and could not anticipate his end so soon, is also no suspicious circumstance in the peculiar circumstances of this case. The constant and repeated acts of misconduct of his wife are likely to have prompted the testator to take the decision to execute the will and disinherit her."

27. In the decision reported as *In the Goods of: Arun Ch. Mitra* AIR 1996 Cal 159 the testator executed a Will in favour of his wife to the exclusion of his other two legal heirs namely 2 sons and a daughter. The eldest son of the testator filed an objection. One of the contentions advanced was that there was no necessity for the testator to make a Will at an young age of 41 years. Holding that the custody, execution and attestation of the Will have been proved, the Calcullta High Court allowed the probate petition filed by the wife of the testator.

28. In the decision reported as *Mrs. Murial Hyden v Mrs. Dulcie M. Robb & Ors* (1991) 1 ALT 5 the testator had died as a bachelor. He had executed a Will in favour of his two sisters. The other legal heirs of the deceased namely children of a deceased sister of the testator and widow and children of a deceased brother of the testator had challenged the Will. One of the contentions was

that it has not been explained in the evidence by the propounder of the Will that as to why testator thought of executing a Will at a ripe age of 44 years. Holding that there are no suspicious circumstances surrounding the execution of the Will the Andhra Pradesh High Court allowed the probate petition filed by the sisters of the testator.

29. Keeping in view the peculiar circumstances of the instant case as also the afore-noted three decisions, more particularly, decision of the Punjab and Haryana High Court in *Smt. Rajeshwari Rani Pathak*'s case (supra) I find no merit in the ground 'A' advanced by the appellant/objector.

30. As regards ground 'B' appellant draws attention of this Court to following recital in the Will dated 15.5.91 Ex.PW1/1 :-

> "That if I demise before my son Master Saurabh Arora attains the age of maturity then I appoint my father Mr.Ved Prakash Arora and in the event of his death Mrs.Kamla Arora and in the event of her death Mrs.Preeti Sarin as the legal guardian of my son Master Saurabh Arora."

31. According to the appellant/objector, the afore-noted clause clearly suggests that the Will is a fabricated document created by the family of the deceased with the sole aim of defeating the rights and claims of the objectors.

32. It is not to be forgotten that the deceased was quite familiar with the legal niceties as he was a party in multifarious litigations. It is quite probable that the Will in question was got prepared by the deceased after consulting and taking help of legal

experts. There is nothing suspicious about the afore-noted clause. The clause only shows that the deceased was cautious in using good legal language and perfecting the Will.

33. Pertaining to ground 'C' i.e. that the attesting witness who proved the will is an interested witness, it is relevant to note the observations of the Supreme Court in the decisions reported as *Rabindra Nath Mukherjee v Panchanan Banerjee* AIR 1995 SC 1684 and *Madhukar D. Shende v Tarabai Aba Shedge* AIR 2002 SC 637.

34. In the *Rabindra's* case (supra), the Supreme Court has observed as under :-

> "6. Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the concerned person knowing its contents. In case where a will is registered and the Sub-registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance. The documents at hand were registered and it is on record that the Sub-registrar had explained the contents to the old lady. So, we do not find the third circumstance as suspicious on the facts of the present case"

35. In the *Madhukar's* case (supra), the Supreme Court has observed as under :-

> "10. The two attesting witnesses on account of being known to Chingubai's son, being his classmates, were known to the family, and therefore, were natural witness to be called to attest the execution of will. On account of their acquaintance with the family, they could have naturally known and identified the executant. Merely because of being classmates they would be interested in obliging their classmates mother so as to benefits her and go to the extent of falsely deposing is too far

fetched an inference to draw.....”

> 15. Other reasoning of the trial court and the first appellate Court, for holding the will not proved, too to say the least, verge on absurdity. Bhagubai died a day after the execution and registration of the will. There is nothing to show that Bhagubai was physically or mentally incapacitated from executing the will. On the one hand, the courts below have questioned the propriety of the Sub-Registrar having come to the house of Bhagubai for registering the will on the ground as to why Bhagubai could not have gone to the office of Registrar on an assumption that she was fit to do so and yet the mental capacity of Bhagubai to execute the will have been doubted. The two attesting witnesses have been held to be 'interested' on the ground of their being classfellows of Chingubai's son and on the other hand, it has been doubted whether they would have known and identified the executant. There is nothing to doubt the mental and physical capacity of Bhagubai but the same has been suspected because of "complete absence of any medical evidence, of a doctor which would show that the testator was in a sound and disposing stare of mind". There is no rule of law or of evidence which requires a doctor to be kept present when a will is executed. In short, the courts below have allowed their findings to be influenced by such suspicion and conjectures as have no foundation in the evidence and have no relevance in the facts and circumstances of the case and unwittingly allowed their process of judicial thinking to be vitiated by irrelevant reasoning and considerations. The weighty factor that the factum of execution of will by Bhagubai was being denied by a rank trespasser without raising any specific pleadings and the fact that no relation of Bhagubai has chosen to lay a challenge to the will, have been simply overlooked. In our opinion, the High Court ought not to have sustained such a perverse finding which would result in the property of a rightful owner being lost to a trespasser.”

36. From the afore-noted two decisions, the legal principle which emerges is that if there is nothing unnatural about the will and the evidence adduced satisfies the requirement of proving a

will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition.

37. As regards ground 'D' i.e. opinion of the handwriting expert Mr. R.P. Singh it is relevant to note the following portions of the cross-examination of the said witness :-

> "It would not be correct to say that there is wide range of natural variation/variety in the formation of different strokes in the admitted signatures A1 to A8. It is however, correct that there are natural variations. It is correct that the curvatures of Staff stroke of letter 'P' of the signature A1, A4, A6 is less curved than the signature A2, A3, A7 and A8."

38. In the decision reported as *Gulzar Ali v State of H.P.* (1998) 2 SCC 192, the Supreme Court has observed as under :-

> ".....The High Court has observed that "there is a natural tendency on the part of an expert witness to support the view of the person who called him" and preferred the opinion of PW 20 M.L. Sharma. The said observation of the High Court cannot be downstaged, for, many so-called experts have been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them."

39. Considering the ipsi-dixit nature of the testimony of the handwriting expert and the fact that the handwriting expert was produced by the objector, in the light of the afore-noted observations of the Supreme Court in *Gulzar*'s case (supra) not much importance can be attached to the testimony and report of the handwriting expert.

40. Even otherwise, there are catena of authorities taking a view that the science of handwriting is not an exact science and

that it is inadvisable to base conclusion in given case solely on the opinion of a handwriting expert.

41. In the decision reported as *Vandavasi Karthikeya v S.Kalamma* AIR 1994 AP 102 the Andhra Pradesh has held as under:-

> ".....We may also mention in this context that the science of handwriting is not an exact sicence unlike the science of fingerprints. Even experts tend to commit errors in giving their opinions on the genuineness of the signatures and handwriting. Even in genuine writing, at times, the penhesitates or even stops especially when the author is under great physical or mental strain. Sometimes, it would be difficult for an expert to examine even the genuineness of different writings, each having its own individuality, but all by the same author. It requires intelligent comparison to differentiate the genuine signature from the forged one. As the author Albert S. Obsborn aptly desribes it:
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> > "As the psychologists explain it, 'likeness and difference co-exist in all things not utterly unlike', so that intelligent comparison for the purpose of classification must always include analysis and reasoning.... A writing or a document, having in mind all the various qualities, elements, features, tendencies, variations and conditions in writings and in documents that have heretofore been discussed. A simple questioned signature should thus be investigated with all these varied qualities under consideration, and until it has thus been scrutinized a signature has not reaily been examined. "Questioned Documents" by Albert S. Osborn Second Edition, p. 238"

42. While dealing with evidence of an handwriting expert in the decision reported as *Magan Bihari Lal v State of Punjab* AIR 1977 SC 109, the Supreme Court opined as under:-

> ".....It is true that B. Lal, the handwriting expert,

deposed that the handwriting on the forged Railway Receipt Ex. PW 10A was that of the same person who wrote the specimen handwritings Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely harardous to condown the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution then the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State 9 AIR 1957 SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad v. Md. Isa AIR 1963 SC 1728that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar v. Subodh Kumar AIR 1964 SC 529 where it was pointed out by this Court that experts evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. vide Gurney v. Langlands 1822, 5 8 & Ald 330 & Matter of Alfead Foster's Will 34 Mich 21 . The Supreme Court of Michan pointed out in the last mentioned case. ''Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship-Opinions are necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil". We need not subscribe to the extreme

> view expressed by the Supreme Court of Michigan, but there can be doubt that this type of evidence, being opinion evidence is by its very nature, weak and infirm and cannot of itself from the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any either evidence connecting the appellant with the offence."

43. To sum up, I note the decision of the Division Bench of the Madras High Court in O.S.A. No.124/2001 titled as '*J. Nawal Kishore v D. Swarana Bhadran & Ors* decided on 3.10.2007 wherein it was observed as under :-

> "In evaluating the evidence of a handwriting expert on the question of genuineness of the signature alleged to be that of the testator, the Court must keep in view the following consideration:
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> Firstly, very few people always sign in the same manner on all occasions;
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> Secondly, the opinion of an expert as to the genuineness of a signature should be received with great caution, especially in a case where there is positive evidence of persons who saw the testator sign the Will;
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> Thirdly, all the tests evolved by experts in the matter of comparison of handwriting and signature are merely tentative in character; and lastly, opinion evidence is usually very weak evidence."

44. In the decision reported as *Savithri & Ors v Karthayayani & Ors* 2007 AIR SCW 6787 one Sankaran Nair had executed a Will bequeathing his entire property in favour of his sister and her children to the exclusion of his son Madhavan Nair and his family. The wife and children of Madhavan Nair challenged the Will. The

Supreme Court has held that fact that the deceased disinherited his son and family is not a suspicious circumstance for the reason relations between the testator and his son were strained and that testator was living with the family of the children since 7 years prior to his death.

45. From the above discussion, following conclusions can be safely drawn:-

I. The will dated 15.5.91 Ex. PW1/1 was executed by the testator of his own free will and the same was signed by him and attested by the two witnesses in each other's presence.

II. The deceased executed the said will voluntarily having full comprehension of the disposition and at that time he was in a free disposing mind and did not suffer from any infirmity so as to cast any doubt that the Will Ex. PW1/1 was not genuine or voluntary.

III. The relations between the deceased and his wife, the objector, at the time of the execution of the Will Ex. PW1/1 were such that it cannot be concluded from the fact of her exclusion from inheritance that the will was in any way unnatural, improbable or unfair. In coming to the said conclusion, reliance has been placed upon decision of the Supreme Court in *Savithri*'s case (supra).

IV. There are no suspicious circumstances surrounding the execution of the Will Ex. PW1/1.

46. In view of conclusions arrived at above, the appeal is

dismissed.

47. No costs.

December 10, 2007 PRADEEP NANDRAJOG
sl (JUDGE)